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## **DEPARTMENT OF HEALTH AND HUMAN SERVICES**

### **45 CFR Parts 160 and 164**

#### **Notification of Enforcement Discretion for Telehealth Remote Communications During the COVID-19 Nationwide Public Health Emergency**

**AGENCY:** Office of the Secretary, HHS.

**ACTION:** Notification of Enforcement Discretion.

**SUMMARY:** This notification is to inform the public that the Department of Health and Human Services (HHS) is exercising its discretion in how it applies the Privacy, Security, and Breach Notification Rules under the Health Insurance Portability and Accountability Act of 1996 (HIPAA). As a matter of enforcement discretion, the HHS Office for Civil Rights (OCR) will not impose penalties for noncompliance with the regulatory requirements under the HIPAA rules against covered health care providers in connection with the good faith provision of telehealth during the COVID-19 nationwide public health emergency.

**DATES:** The Notification of Enforcement Discretion went into effect on March 17, 2020, and will remain in effect until the Secretary of HHS declares that the public health emergency no longer exists, or upon the expiration date of the declared public health emergency, including any extensions, (as determined by 42 U.S.C. 247d),<sup>1</sup> whichever occurs first.

**FOR FURTHER INFORMATION CONTACT:** Rachel Seeger at (202) 619-0403 or (800) 537-7697 (TDD).

#### **SUPPLEMENTARY INFORMATION:**

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<sup>1</sup> Public Health Emergency Declaration issued by HHS Secretary, pursuant to Section 319 of the Public Health Service Act, on January 31, 2020, with retroactive effective date of January 27, 2020. For more information, see <https://www.phe.gov/emergency/news/healthactions/phe/Pages/2019-nCoV.aspx>.

## **I. Background**

The Office for Civil Rights (OCR) at the Department of Health and Human Services (HHS) is responsible for enforcing certain regulations issued under the Health Insurance Portability and Accountability Act of 1996 (HIPAA)<sup>2</sup>, as amended by the Health Information Technology for Economic and Clinical Health (HITECH) Act, to protect the privacy and security of protected health information, namely the HIPAA Privacy, Security and Breach Notification Rules (the HIPAA Rules).

During the COVID-19 national emergency, which also constitutes a nationwide public health emergency, covered health care providers subject to the HIPAA Rules may seek to communicate with patients, and provide telehealth services, through remote communications technologies.

Some of these technologies, and the manner in which they are used by HIPAA covered health care providers, may not fully comply with the requirements of the HIPAA Rules. OCR will exercise its enforcement discretion and will not impose penalties for noncompliance with the regulatory requirements under the HIPAA Rules against covered health care providers in connection with the good faith provision of telehealth during the COVID-19 nationwide public health emergency.

A covered health care provider that wants to use audio or video communication technology to provide telehealth to patients during the COVID-19 nationwide public health emergency can use any non-public facing remote communication product that is available to

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<sup>2</sup> Due to the public health emergency posed by COVID-19, the HHS Office for Civil Rights (OCR) is exercising its enforcement discretion under the conditions outlined herein. We believe that this guidance is a statement of agency policy not subject to the notice and comment requirements of the Administrative Procedure Act (APA). 5 U.S.C. 553(b)(3)(A). OCR additionally finds that, even if this guidance were subject to the public participation provisions of the APA, prior notice and comment for this guidance is impracticable, and there is good cause to issue this guidance without prior public comment and without a delayed effective date. 5 U.S.C. 553(b)(3)(B) & (d)(3)

communicate with patients. OCR is exercising its enforcement discretion to not impose penalties for noncompliance with the HIPAA Rules in connection with the good faith provision of telehealth using such non-public facing audio or video communication products during the COVID-19 nationwide public health emergency. This exercise of discretion applies to telehealth provided for any reason, regardless of whether the telehealth service is related to the diagnosis and treatment of health conditions related to COVID-19.

For example, a covered health care provider in the exercise of their professional judgement may request to examine a patient exhibiting COVID- 19 symptoms, using a video chat application connecting the provider's or patient's phone or desktop computer in order to assess a greater number of patients while limiting the risk of infection of other persons who would be exposed from an in-person consultation. Likewise, a covered health care provider may provide similar telehealth services in the exercise of their professional judgment to assess or treat any other medical condition, even if not related to COVID-19, such as a sprained ankle, dental consultation or psychological evaluation, or other conditions.

Under this Notification, covered health care providers may use popular applications that allow for video chats, including Apple FaceTime, Facebook Messenger video chat, Google Hangouts video, Zoom, or Skype, to provide telehealth without risk that OCR might seek to impose a penalty for noncompliance with the HIPAA Rules related to the good faith provision of telehealth during the COVID-19 nationwide public health emergency. Providers are encouraged to notify patients that these third-party applications potentially introduce privacy risks, and providers should enable all available encryption and privacy modes when using such applications.

Under this notification, however, Facebook Live, Twitch, TikTok, and similar video

communication applications are public facing, and should not be used in the provision of telehealth by covered health care providers.

Covered health care providers that seek additional privacy protections for telehealth while using video communication products should provide such services through technology vendors that are HIPAA compliant and will enter into HIPAA business associate agreements (BAAs) in connection with the provision of their video communication products. The list below includes some vendors that represent that they provide HIPAA-compliant video communication products and that they will enter into a HIPAA BAA.

- Skype for Business I Microsoft Teams
- Updox
- VSee
- Zoom for Healthcare
- Doxy.me
- Google G Suite Hangouts Meet
- Cisco Webex Meetings I Webex Teams
- Amazon Chime
- GoToMeeting
- Spruce Health Care Messenger

OCR has not reviewed the BAAs offered by these vendors, and this list does not constitute an endorsement, certification, or recommendation of specific technology, software, applications, or products. There may be other technology vendors that offer HIPAA-compliant video communication products that will enter into a HIPAA BAA with a covered entity. Further, OCR does not endorse any of the applications that allow for video chats listed above.

Under this notification, however, OCR will not impose penalties against covered health care providers for the lack of a BAA with video communication vendors or any other noncompliance with the HIPAA Rules that relates to the good faith provision of telehealth services during the COVID-19 nationwide public health emergency.

### **III. Collection of Information Requirements**

This notice of enforcement discretion creates no legal obligations and no legal rights. Because this notice imposes no information collection requirements, it need not be reviewed by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

Dated: April 2, 2020.

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**Roger T. Severino**

*Director, Office for Civil Rights*

*Department of Health and Human Services.*

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